



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 1, 1998

Ms. Joanne Wright
Acting Deputy General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 E. 11th Street
Austin, Texas 78701-2483

OR98-1364

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 115868.

The Texas Department of Transportation (the "department") received an open records request for the names and locations of all businesses in San Antonio and Austin that have been affected by highway expansion projects in the past eight years. The requestor also seeks the names of all such businesses where both owners and lessees have been relocated. You contend the requested information is excepted from required public disclosure pursuant to section 552.103 of the Government Code.

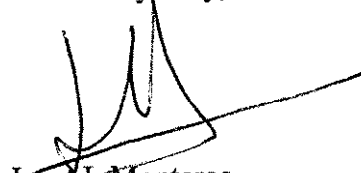
To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. You inform this office that the requested information relates to a pending condemnation proceeding because "the department's handling of businesses similarly situated to [the condemned property] will be a relevant issue in this litigation." We conclude that you have met your burden of establishing that the requested information "relates" to pending litigation to which the department is a party. The department therefore may withhold the requested records pursuant to section 552.103 of the Government Code.

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records

Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103. We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Janet I. Monteros', with a long horizontal line extending to the right.

Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/RWP/gle

Ref.: ID# 115868

Enclosures: Submitted documents

cc: Mr. Gilbert Groomer
9801 McCullough
San Antonio, Texas 78216
(w/o enclosures)